

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MANUEL GILL and DEPARTMENT OF THE AIR FORCE,
NORTON AIR FORCE BASE, CA

*Docket No. 99-915; Submitted on the Record;
Issued March 2, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's benefits effective March 18, 1998 on the grounds that he had no further residual condition or disability causally related to his June 26, 1992 employment injury; (2) whether the Office properly terminated appellant's authorization for medical treatment; and (3) whether appellant has established that he had continuing disability after March 18, 1998 causally related to his accepted employment injury.

This case is before the Board for the second time. In the first appeal, the Board found that a conflict in medical opinion existed between appellant's attending physician and the Office referral physician and that, consequently, the Office had not met its burden of proof to terminate compensation.¹

By letter dated April 15, 1997, the Office referred appellant to Dr. David L. Wood, a Board-certified orthopedic surgeon, for an impartial medical examination. In a report dated August 6, 1997, Dr. Wood diagnosed a strain/sprain of the cervical spine, minimal disc bulging at C4-5 and C5-6, a one- to two-millimeter disc bulge at L4-5 and a strain/sprain of the lumbar spine. He stated:

“[Appellant] presents to this [O]ffice with complaints of symptomatology affecting the neck and back. His symptoms are related to a specific injury which occurred on June 26, 1992 during his employment at [the employing establishment]. To date, he has received conservative treatment for his injuries; however, he has ongoing complaints in the neck and back. His clinical findings were consistent with soft tissue straining-type injury; however, there was an element of embellishment of symptomatology on examination. [Appellant's] movements were guarded and some of the range of motion measurements may not

¹ *Manuel Gill*, Docket No. 95-750 (issued February 10, 1997).

be truly representative of [his] full abilities. Nonetheless, he does have a documented work injury and it is not unreasonable that he have some residual subjective complaints and limitations from these injuries.”

Dr. Wood opined that appellant did not require further medical care or surgical intervention. He found that appellant should not perform “very heavy lifting” due to his cervical condition or “very heavy work” due to problems with his lumbar spine. Dr. Wood indicated that the restrictions were prophylactic in nature.

By letter dated September 15, 1997, the Office requested that Dr. Wood explain why appellant continued to have residuals of his June 26, 1992 employment injury and discuss whether the work restrictions he provided were prophylactic or whether appellant could only work within the described limitations.

In a supplemental report dated November 17, 1997, Dr. Wood related:

“In most cases neck and back injuries do fully resolve; however, in some cases patients are left with ongoing chronic pain which stays with them. With the information I have seen I believe this is the case with [appellant]. He will be left with some residuals in the neck and back.

“Regarding his current work status, I have recommended work restrictions on the open labor market on a prophylactic basis. These work restrictions are recommended to hopefully avoid the frequency of flare-ups and help safeguard [appellant] from sustaining additional injury. I have recommended these restrictions on a completely prophylactic basis. Also, on a prophylactic basis, I recommended that he not return to the job duties he was performing at [the employing establishment]. However, regarding actual limitations in the workplace, I must say that [appellant] would be able to perform the duties, including the very heavy lifting and very [heavy] work activities, although he would be at a greater risk for sustaining injury.”

In an Office memorandum dated December 8, 1997, a claims examiner noted that Dr. Wood did not fully address whether appellant’s disc bulging was due to his preexisting back condition, the employment injury or to the aging process. Dr. Wood had indicated that all his work restrictions were prophylactic in nature. The claims examiner noted that a computerized tomography scan of the cervical and lumbar spine obtained contemporaneous to appellant’s employment injury did not show either cervical or lumbar disc bulging. She noted that Dr. Wood’s opinion was not well explained and recommended referring appellant for a second impartial medical examination.

By letter dated December 10, 1997, the Office referred appellant, together with the case record and a statement of accepted facts, to Dr. Jayaraja Yogaratnam, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a report dated January 14, 1998, Dr. Yogaratnam discussed appellant’s current complaints, reviewed his medical history and listed findings on physical examination. He found

that a magnetic resonance imaging (MRI) study of appellant's cervical spine showed no significant disc protrusion and that an MRI of the lumbar spine showed a slight bulge at L4-5 without evidence of stenosis. Dr. Yogaratnam diagnosed status post soft tissue injuries of the neck and a questionable soft tissue injury of the back. He stated:

“Examination of both shoulders showed restriction of motion to 90 degrees in abduction and forward flexion also about 50 percent loss on the right side in internal rotation and about one-third loss of internal rotation on the left shoulder. Elbows, wrist joints and the joints of the fingers showed no abnormality. He registered a weakness of grip strength in both hands. I believe that a man of his physical stature should have at least double the grip strengths that were registered. In the absence of any atrophy of the muscles of the forearm and hand, I do not see any reason why he should not have achieved to his normal grip strength and I believe there was poor effort made for reasons best known to himself. There is no evidence of any muscle weakness in the upper extremities and I do not see why he had the restriction of motion in abduction and forward flexion and internal rotation. Testing of the shoulder showed no evidence of an impingement sign and, therefore, this should not have precluded him from performing internal rotation. I believe that the pain level that should be present at this point in time in the muscles of his back should also not have precluded his ability to perform internal rotation or the other restricted movements of the shoulders.”

Dr. Yogaratnam further related that appellant had restricted motion of the lumbar spine, which he felt was “not a true representation of what he probably could have done.” He noted that appellant had “no evidence of any muscle wasting or atrophy or weakness to testing. There was no impaired sensation or diminished or absent reflexes to indicate any neurologic defect.” Dr. Yogaratnam further stated:

“The description of his complaints today such as ‘I can[not] touch the area of my left thigh just above and behind the knee’ was disproved as under distraction I was able to freely touch his thigh above the knee and there was no evidence of any complaint and he also stated that when he gets a spasm in his neck he feels ‘his back and leg muscles inflamed.’ These are bizarre symptomatology with no objective correlation whatsoever....”

Dr. Yogaratnam found that appellant's injury caused soft tissue injuries to his upper back and possibly his lower back. He opined that appellant had a “mild degree of subjective residual disability which should not at all be disabling for him to continue with the type of work that he was performing.” Dr. Yogaratnam found that appellant had no work restrictions and needed no further medical care. He stated:

“His original/initial disability is causally related to the injury. It is probable that postinjury he would have experienced complaints in his neck and probably his back for a period of about six months at the maximum but I do not believe that the persisting symptoms that he complains of today are in any way disabling to the extent that he is unable to return to his usual duties or seek work in the open labor market. This assessment is based on the mechanism of the injury and the type of

pathology that would have been incurred as a result of the injury and the natural process of healing and my experience.”

In an accompanying work restriction evaluation, Dr. Yogaratnam found that appellant had no work limitations.

By decision dated March 18, 1998, the Office terminated appellant’s compensation benefits and authorization for medical treatment effective that date on the grounds that he had no further residual condition or disability causally related to his June 26, 1992 employment injury.

In a letter dated November 20, 1998, appellant through his representative, requested reconsideration. By decision dated December 16, 1998, the Office denied modification of its prior decision.

The Board finds that the Office properly terminated appellant’s compensation benefits effective March 18, 1998 on the grounds that the evidence established that he had no further residual condition or disability causally related to his June 26, 1992 employment injury.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. The Office may not terminate or modify compensation without establishing that the disabling condition ceased or that it was no longer related to the employment.² The Office’s burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³

Where there exists a conflict in medical opinion and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.⁴ While the Office initially referred appellant to Dr. Wood for an impartial medical examination, the Board finds that Dr. Wood’s report did not adequately address the issue of whether appellant had further employment-related disability or explain appellant’s residuals. His opinion is not well rationalized and noted only that his work restrictions that were prophylactic in

² *David W. Green*, 43 ECAB 883 (1992).

³ *See Del K. Rykert*, 40 ECAB 284 (1988).

⁴ *Leanne E. Maynard*, 43 ECAB 482 (1992).

nature.⁵ The Office, therefore, properly referred appellant to Dr. Yogaratnam for a second impartial medical examination.⁶

The Board finds that the weight of the medical evidence is represented by the thorough and well-rationalized opinion of Dr. Yogaratnam, the impartial medical specialist selected to resolve the conflict in the medical opinion evidence. He found that appellant had no further disability due to his accepted employment injury of back strain and that he could return to his usual employment. Dr. Yogaratnam provided a thorough factual and medical history and accurately summarized the relevant medical evidence. Moreover, he provided a proper analysis of findings on examination, including the results of diagnostic testing and reached conclusions regarding appellant's condition which comported with this analysis.⁷ The Board finds that Dr. Yogaratnam's opinion is entitled to special weight as the impartial medical examiner and supports that appellant's accepted back strain resolved by March 18, 1998, the date the Office terminated compensation benefits.

The Board further finds that the Office properly terminated appellant's authorization for medical treatment.

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁸ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which required further medical treatment.⁹ The Office met this burden through the report of Dr. Yogaratnam, who found that appellant needed no further medical treatment.

The Board further finds that appellant has not established that he had continuing disability after March 18, 1998 causally related to his accepted employment injury.

Given that the Board has found that the Office properly relied upon the opinion of the impartial medical examiner, Dr. Yogaratnam, in terminating compensation, the burden of proof shifts to appellant to establish that he remains entitled to compensation after that date.¹⁰ To establish causal relationship between the claimed disability and the employment injury, appellant

⁵ Appellant argues on appeal that the Office should credit the opinion of Dr. Wood. However, Dr. Wood found that appellant could resume his usual employment and that the listed limitations were solely to prevent further injury. The fear of future injury is not compensable under the Federal Employees' Compensation Act. *See Mary A. Geary*, 43 ECAB 300 (1991).

⁶ *See Margaret M. Gilmore*, 47 ECAB 718, 722 (1996).

⁷ *See Melvina Jackson*, 38 ECAB 443 (1987).

⁸ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁹ *Id.*

¹⁰ *George Sevetas*, 43 ECAB 424 (1992).

must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.¹¹

Appellant submitted a report from Dr. Gerald R. Goodlow, a Board-certified physiatrist, who noted that appellant injured his back in June 1992 and currently complained of “intense pain in his neck and upper and lower back, and also pain and paresthesia in his arms and legs with radiating pain to these areas.” Dr. Goodlow diagnosed chronic myofascial pain and possible fibromyalgia and found that appellant was permanently disabled. He, however, did not relate the diagnosed conditions of myofascial pain and possible fibromyalgia to appellant’s employment injury and thus his opinion is of little probative value. Dr. Goodlow’s report, therefore, is insufficient to overcome the weight accorded to Dr. Yogaratnam’s opinion as the impartial medical specialist or to create a new conflict.

The decisions of the Office of Workers’ Compensation Programs dated December 16 and March 18, 1998 are hereby affirmed.

Dated, Washington, DC
March 2, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹¹ *John M. Tornello*, 35 ECAB 234 (1983).